INDEX

Page

QUESTIONS PRESENTED

1. Whether this Court should review the refusal of the lower court to set aside a final determination on the merits of a management-union joint committee, established pursuant to the grievance-arbitration provisions of the collective bargaining agreement? 1

2. Whether this Court should review the determination of the lower court that, on the facts of the case, the plaintiffs did not meet their burden of proving that the unions breached their duty of fair representation? .. 1

STATEMENT OF THE CASE 2

REASONS WHY THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED 5

CONCLUSION 9

TABLE OF AUTHORITIES

Cases:	Page
Bieski v. *Eastern Automobile Forwarding Co.*, 396 F. 2d 32 (CA 3, 1968)	9
Collyer Insulated Wire, 192 NLRB No. 150	8
Commonwealth Coatings Corp. v. *Continental Casualty Co.*, 393 U.S. 145, 150-151 (Justice White, concurring opinion), 21 L. Ed. 2d 301 (1968)	7
Denver-Chicago Trucking Company, Inc., 132 NLRB 1416 (1960)	7
Eazor Express, Inc., 172 NLRB No. 201 (1968)	7
Elrod v. *Western Conference of Teamsters*, — F. Supp. —, 77 LRRM 2619 (D.C. Calif., 1971)	9
Ford Motor Co. v. *Huffman*, 345 U.S. 330, 97 L. Ed. 1048 (1953)	6
Fuller v. *Truck Drivers Local 107*, 428 F. 2d 503 (CA 3, 1970)	9
General Drivers, Local 89 v. *Riss & Co.*, 372 U.S. 517, 9 L. Ed. 2d 918 (1963)	5, 9
Humphrey v. *Moore*, 375 U.S. 335, 11 L. Ed. 2d 370 (1964)	6, 9
Local Freight Drivers, Local 208, et al. v. *Braswell Motor Freight Lines, Inc.*, 422 F. 2d 109 (CA 9, 1970)	9
McLean Trucking Company, 202 NLRB No. 102 (1973)	7
Modern Motor Express, Inc., 149 NLRB 1507 (1964)	7
Price v. *Teamsters*, 457 F. 2d 605 (CA 3, 1972)	9
Steelworkers v. *American Mfg. Co.*, 363 U.S. 564, 4 L. Ed. 2d 1403 (1960)	5
Steelworkers v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593, 4 L. Ed. 2d 1424 (1960)	5

Page

Steelworkers v. *Warrior & Gulf Co.*, 363 U.S. 574, 4 L. Ed. 2d 1409 (1960) 5

Teamsters Local Union 745, et al. v. *Braswell Motor Freight*, 428 F. 2d 1371 (CA 5, 1970) cert. den., 401 U.S. 937 (1971) 9

Vaca v. *Sipes*, 386 U.S. 171, 190, 17 L. Ed. 2d 842 (1967) 8, 9

Williams v. *Pacific Motor Trucking Co., et al.*, —— F. Supp. ——, 76 LRRM 2534 (DC, Calif., 1971) 9

Other Authorities:

Cox, "Rights Under a Labor Agreement", 69 Harv. L. Rev. 601, 632 (1956) 7

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1972

No. 72-1133

ROBERT MORRIS, et al.,
Petitioners,

vs.

WERNER CONTINENTAL, INC., et al.,
Respondents.

On Petition For Writ Of Certiorari to The United States Court of Appeals For The Sixth Circuit

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BRIEF IN OPPOSITION

For Respondents Local Unions 100, 413, 957 and 407, All Of The International Brotherhood Of Teamsters, Chauffeurs, Warehousemen And Helpers Of America, The International Brotherhood of Teamsters, Chauffeurs, Warehousemen And Helpers Of America And The Ohio Joint State Grievance Committee

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QUESTIONS PRESENTED

1. Whether this Court should review the refusal of the lower court to set aside a final determination on the merits of a management-union joint committee, established pursuant to the grievance-arbitration provisions of the collective bargaining agreement?

2. Whether this Court should review the determination of the lower court that, on the facts of the case, the plain-

tiffs did not meet their burden of proving that the unions breached their duty of fair representation?

STATEMENT OF THE CASE

This case arises out of a dispute regarding the allocation of seniority, pursuant to a collective bargaining agreement, between the employees of two merged companies.

In late 1967, the Werner Transportation Co., hereinafter called Werner, and Continental Transportation Lines, Inc., hereinafter called Continental, entered into a statutory merger agreement. Although the new company was named Werner-Continental, Inc., it is uncontroverted that the Werner Company assumed virtually exclusive control of the surviving entity.

The merger of the two companies caused the consolidation of terminals, and consequently seniority lists, at all of the company's terminals located within the State of Ohio. The consolidation of seniority lists occurred separately in the terminals and consolidation of the lists was to be effective at all four cities on March 1, 1968.

The seniority of all of the affected terminals in the four Ohio cities was governed by a collective bargaining agreement, the "National Master Freight Agreement and Central States Area Local Cartage Supplemental Agreement for the Period of April 1, 1967 to March 31, 1970", hereinafter called the collective bargaining agreement or the National Master Freight Agreement. Both the former Werner and Continental Companies had been separately signatory to the collective bargaining agreement. In Ohio, the collective bargaining agreement had been executed between the companies and four separate local unions: Local 407 (Cleveland), Local 413 (Columbus), Local 957 (Dayton) and Local 100 (Cincinnati).

The application of the existing seniority rules placed the former Continental drivers at the bottom of the seniority list at each of the four city terminals. The Continental drivers complained about their seniority positioning, and all four of the affected local unions filed grievances with the Ohio Joint State Grievance Committee, hereinafter sometimes called the Joint State Committee, a management-union grievance panel established pursuant to the grievance-arbitration provisions of the collective bargaining agreement. The grievances regarding the seniority dispute at the four Ohio city terminals were subsequently heard by the Joint State Committee.

The case before the Joint State Committee turned upon whether the transaction between Werner and Continental constituted a "purchase" or a "merger" under a long standing Ohio seniority rule, known as the "Ohio Past Practice". Following a full and complete hearing of the dispute,[1] the Joint State Committee upheld the seniority positioning of the former Continental drivers in relation to the former Werner drivers.

The original Complaint was filed in the District Court on March 1, 1968, the effective date of the consolidation of the seniority lists. The Complaint was filed by a number of the former Continental drivers as a class action. Named as Defendants in the suit were: The Werner-Continental Company, the former Werner Company, the former Continental Company, all four of the affected Teamster Local

[1] The hearing was fully attended by driver-grievants from the complaining Continental group. At least five (5) of the individually named plaintiffs herein participated, along with business representatives from the four (4) affected local unions. All parties present were given the opportunity to offer anything that they deemed relevant to the case. All of the participating grievants and their business representatives were present throughout the hearing. No objections were made by any of the grievants regarding the procedures of the Joint Committee.

Unions, the Ohio Joint State Grievance Committee and the International Brotherhood of Teamsters. The International Brotherhood of Teamsters had been at no time involved in the dispute as it developed prior to the filing of the grievances and during the processing of the grievances before the Joint State Committee.

In the District Court, the Plaintiffs contended that the decision of the Joint State Committee was null and void. They contended that the Werner-Continental Company had violated the collective bargaining agreement in its placement of the plaintiffs on the merged seniority lists. They contended that the unions had breached their duty of fair representation in the processing of the grievances, and that the unions had connived with the Ohio Joint State Grievance Committee.

On the facts of the case, the trial court found that there had occurred no breach of the duty of fair representation by the unions. The trial court refused to set aside the findings and determination of the Joint Committee. Accordingly, the Petitioners' case in the District Court was dismissed in its entirety. (Petition, App. II, p. 22)

In the Court of Appeals, it was concluded that the trial court had properly declined to set aside the decision of the Ohio Joint State Committee, consistent with the trial court's factual findings. The decision of the District Court was affirmed. (Petition, App. II, p. 32)

REASONS WHY THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED

I

The Decision of the District Court is based upon well established legal principles. There are no new or novel issues of great significance involved in this case.[2]

The principles well established by this Court clearly favor the binding effect of private agreed-upon procedures established by parties for the resolution of disputes arising under collective bargaining agreements. The Steelworkers Trilogy, *Steelworkers* v. *American Mfg. Co.*, 363 U.S. 564, 4 L Ed. 2d 1403 (1960); *Steelworkers* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593, 4 L. Ed. 2d 1424 (1960); *Steelworkers* v. *Warrior & Gulf Co.*, 363 U.S. 574, 4 L. Ed. 2d 1409 (1960). This philosophy was described in *Steelworkers* v. *Enterprise Wheel & Car Corp.*:

> ". . . the question of interpretation of the collective bargaining agreement is a question for the arbitrator. It is the arbitrator's construction which was bargained for; insofar as the arbitrator's decision concerns construction of the contract, the Courts have no business overruling him because their interpretation of the contract is different from his." 363 U.S. at 599

General Drivers, Local 89 v. *Riss & Co.*, 372 U.S. 517, 9 L. Ed. 2d 918 (1963), expressly recognized the full

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[2] The Petitioners seek to highlight their case before this Court by the tailoring and even creation of facts not present in the trial court. This attempt by the Petitioners, we submit, supports the contention that the case involves nothing more than certain factual issues determined by the Joint Committee and left undisturbed by the trial court. Many of the Petitioners factual fabrications are unrelated to the issues raised in this Court or the courts below. Certain factual corrections have been made herein where deemed relevant and necessary.

and binding effect of joint committee awards issued pursuant to the Teamsters-trucking industry procedures.

In *Humphrey* v. *Moore*, 375 U.S. 335, 11 L. Ed. 2d 370 (1964), the Court was presented with an absorption or merger situation affecting groups of employees covered by a Teamsters-trucking industry collective bargaining agreement. The final and binding decision of the joint committee was upheld, with recognition that the committee had the authority to interpret the contract.

The Court had stated in *Ford Motor Co.* v. *Huffman*, 345 U.S. 330, 97 L. Ed. 1048 (1953), that "A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion". 345 U.S. at 338.

II

The Petitioners seek to side-step the determination of the Joint Committee by the creation before this Court of a "due process" argument not heretofore present in the case.[3]

Moreover, Petitioners' claims regarding inaccessibility to counsel are factually groundless. The Petitioners did have access to advice of counsel at all times during the dispute.

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[3] The issue of right to counsel in the arbitration hearing is being raised by the Petitioners for the first time before this Court. The District Court Decision spells out the Petitioners' procedural complaints in the trial court. (Petition, App. II, p. 20) This argument is noticeably absent. Moreover, there is no indication in the Court of Appeals Decision that this argument was ever made, unless Petitioners' general allegations that the hearing was unfair, found to be without merit by the lower court, could now be deemed to raise the precise right to counsel argument in this Court.

The instant case in the District Court had been filed prior to the hearings before the Joint State Committee.[4]

Nevertheless, it is recognized that the joint committee procedure is not intended to duplicate the formality of the court room, but rather to provide the expertise of those intimately involved in the workings of a particular industry toward the settlement of its problems. Cf. *Commonwealth Coatings Corp.* v. *Continental Casualty Co.*, 393 U.S. 145, 150-151 (Justice White, concurring opinion), 21 L. Ed. 2d 301 (1968).

This view has, up to the present, also been followed by the National Labor Relations Board in cases involving joint committee proceedings. *McLean Trucking Company*, 202 NLRB 102 (1973); *Eazor Express, Inc.*, 172 NLRB No. 201 (1968); *Modern Motor Express, Inc.*, 149 NLRB 1507 (1964); *Denver-Chicago Trucking Company, Inc.*, 132 NLRB 1416 (1960).

It has long been recognized that the courts must provide the parties with flexibility in the administration and resolution of disputes arising under a collective bargaining agreement. Collective bargaining agreements in many respects can serve as no more than "guideposts in a dynamic human relationship". Cox, "Rights Under a Labor Agreement", 60 Harv. L. Rev. 601, 632 (1956).

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[4] In fact, Plaintiff Morris in his November 1, 1967 grievance to the Cincinnati local, had already threatened legal action. At that early date, the local union officials had no actual knowledge regarding the format of the impending Werner-Continental transaction, and, in addition, discovered that such information was simply not available to them. As early as January, 1968, plaintiff Morris had sought the advice of the attorneys that were ultimately to file the District Court action. The record below contains a January 17, 1968 letter from that law firm to the union chairman of the Ohio Joint State Committee.

The National Labor Relations Board decision in *Collyer Insulated Wire,* 192 NLRB No. 150 (1971), has placed substantially increased emphasis upon the arbitration process. Satisfaction of the Petitioners' claims herein would not serve the promotion of industrial peace in general.

III

In the trial court, the Petitioners made varying allegations that the unions had breached their duty of fair representation. Of course, whether or not a breach of the duty occurs depends upon the particular facts of the case.

The standards for determining whether the collective bargaining representative engages in fair representation were set forth by the Court in *Vaca* v. *Sipes,* 386 U.S. 171, 190, 17 L. Ed. 2d 842 (1967). A breach of the duty of fair representation occurs only when the collective bargaining agent's conduct toward the member is arbitrary, discriminatory or in bad faith.

The District Court applied the *Vaca* standards to the conduct of the unions herein and found, on the facts, that a breach of the duty of fair representation had not occured. (Petition, App. II, pp. 21-22) There is, therefore, no legal question regarding the unions' alleged failure of representation present for this Court's attention.

IV

This case does not contain issues upon which there has been any conflict of decision among the Circuits.

The total effect of the principles established by this Court is that absent fraud, bad faith, bias, or collusion,

decisions by arbitrators, or joint committees, are final and binding. *General Truck Drivers* v. *Riss & Co., Inc.*, supra; *Humphrey* v. *Moore*, supra and *Vaca* v. *Sipes*, supra. These principles have been consistently and uniformly applied by the lower courts regarding joint committee awards issued pursuant to the Teamsters-multi employer agreements. *Fuller* v. *Truck Drivers Local 107*, 428 F. 2d 503 (CA 3, 1970); *Bieski* v. *Eastern Automobile Forwarding Co.*, 396 F. 2d 32 (CA 3, 1968); *Teamsters Local Union 745, et al.* v. *Braswell Motor Freight*, 428 F. 2d 1371 (CA 5, 1970) cert. den., 401 U.S. 937 (1971); *Local Freight Drivers, Local 208, et al.* v. *Braswell Motor Freight Lines, Inc.*, 422 F. 2d 109 (CA 9, 1970); *Price* v. *Teamsters*, 457 F. 2d 605 (CA 3, 1972); *Elrod* v. *Western Conference of Teamsters*, — F. Supp. —, 77 LRRM 2619 (D.C. Calif., 1971); *Williams* v. *Pacific Motor Trucking Company, et al.*, — F. Supp. —, 76 LRRM 2534 (D.C. Calif., 1971).

CONCLUSION

The District Court, under all of the facts of the case, refused to set aside the final determination issued by the Joint Committee, and failed to find that the unions had breached their duty of fair representation. The District Court's Decision and the affirmation by the Court of Appeals are founded upon principles well established by this Court. The Petitioners now attempt to have this Court review the case on an issue that was never raised in the courts below. The Petition is simply another attempt to acquire court review of the *merits* of the grievances decided by the Joint Committee.

For all the foregoing reasons, it is respectfully submitted that this Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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